

EXHIBIT 1

INTRODUCTION

Respondent Ron Holmes is a battalion chief with the City of Modesto Fire Department. As a battalion chief, Respondent is a designated employee of the Modesto Fire Department, as defined in Section 82019, subdivision (c) of the Political Reform Act (the “Act”)¹ and in the Conflict of Interest Code for the Modesto Fire Department.

As required by the Act and the Modesto Fire Department’s Conflict of Interest Code, each designated employee of the Modesto Fire Department must file an annual statement of economic interests (“SEI”) by April 1 of each year (unless April 1 falls on a Saturday, Sunday, or official holiday, in which case the filing deadline is extended to the next regular business day).² On the SEI, the designated employee must disclose the reportable economic interests that he or she held during the preceding calendar year.

In this matter, Respondent failed to disclose any information on his 1997 and 1998 annual SEI’s, although he had reportable interests.

For the purposes of this Stipulation, Respondent’s violations of the Act are stated as follows:

COUNT 1: On or about March 23, 1998, Respondent Ron Holmes failed to disclose interests in real property and sources of income on his 1997 annual statement of economic interests, in violation of Section 87300.

COUNT 2: On or about March 31, 1999, Respondent Ron Holmes failed to disclose interests in real property and sources of income on his 1998 annual statement of economic interests, in violation of Section 87300.

SUMMARY OF THE LAW

An express purpose of the Act, as set forth in section 81002, subdivision (c), is to ensure that the assets and income of public officials, which may be materially affected by their official actions, be disclosed, so that conflicts of interest may be avoided.

In furtherance of this purpose, section 87300 requires every agency to adopt and promulgate a conflict of interest code. An agency’s conflict of interest code must specifically designate the employees of the agency who are required to file SEI’s, disclosing their reportable investments, business positions, interests in real property, and other income. Under section 82019, subdivision (c), and section 87302,

¹ The Act is contained in Government Code sections 81000 through 91014. All statutory references are to the Government Code unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in section 18109 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

² Regulation 18116.

subdivision (a), the persons who are to be designated in an agency's conflict of interest code are the officers, employees, members, and consultants of the agency, whose position with the agency entails making, or participating in making, decisions that may foreseeably have a material effect on a financial interest.

Under Section 87302, subdivision (b), an agency's conflict of interest code must require every designated employee of the agency to file an annual SEI, for each year that the employee remains in office, at a time specified in the agency's conflict of interest code, disclosing his or her reportable economic interests from the preceding calendar year. This subdivision also provides that the information disclosed with respect to reportable investments, interests in real property, and income shall be the same as the information required by Sections 87206 and 87207.

If an interest in real property was required to be disclosed in an SEI, Section 87206, as it existed in 1997 and 1998, provided that the statement had to contain information regarding: the nature of the interest; the address or other precise location of the real property; and whether the fair market value of the interest equaled or exceeded \$1,000 but did not exceed \$10,000, exceeded \$10,000 but did not exceed \$100,000, or exceeded \$100,000. Under Section 82033, as it existed in 1997 and 1998, the term "interest in real property" included, in part, any beneficial or ownership interest in real property located in the jurisdiction owned directly, indirectly, or beneficially by the public official, or his or her immediate family, if the fair market value of the interest was \$1,000 or more.

If income was required to be disclosed in an SEI, Section 87207, subdivision (a), as it existed in 1997 and 1998, provided that the statement had to contain information regarding: the name and address of each source of income aggregating \$250 or more in value; whether the aggregate value of income from each source, or in the case of a loan, the highest amount owed to each source, was at least \$250 but did not exceed \$1,000, whether it was in excess of \$1,000 but was not greater than \$10,000, or whether it was over \$10,000; and a description of the consideration, if any, for which the income was received. Under Section 82030, subdivision (a), the term "income" means, in part, any payment received from any source located in or doing business in the jurisdiction, including but not limited to, salary, wages, commission income, rents, loan proceeds, reimbursement for expenses, and any community property interest in the income of a spouse.

Under section 87300, the requirements of an agency's conflict of interest code have the force of law, and any violation of those requirements is deemed a violation of the Act.

SUMMARY OF THE FACTS

Respondent Ron Holmes is a battalion chief with the City of Modesto Fire Department. He has been with the Modesto Fire Department since 1973, and has been a battalion chief for the last 15 years. As a battalion chief, Respondent is a designated employee under the Modesto Fire Department's Conflict of Interest Code, and is required to file an annual SEI. Under the Modesto Fire Department's Conflict of Interest Code, a battalion chief is required to report all investments, interests in real property, income, loans or gifts from individuals or businesses, from all sources located in or doing business within the jurisdiction.

Count 1

Respondent filed a 1997 annual SEI with the Modesto City Clerk, on or about March 23, 1998. The statement covered the period January 1, 1997 through December 31, 1997. On the cover page of the statement, in the section entitled "Schedule Summary," Respondent declared, under penalty of perjury, that he had no reportable interests. In fact, Respondent had real property interests in the City of Modesto: two rental properties, from which he also derived income. Respondent also had income from the lenders for his rental properties, and the Bank of America where his wife worked.

According to Respondent, he has had rental properties and income from his wife's employment for 25 years, but he has never disclosed those assets and income on his annual SEI's, because he did not know it was important. At the request of the Enforcement Division, Respondent filed an amended 1997 annual SEI on or about November 12, 2002.

By failing to disclose interests in real property and sources of income on the 1997 annual SEI that he filed on or about March 23, 1998, Respondent violated Section 87300.

Count 2

Respondent filed a 1998 annual SEI with the Modesto City Clerk, on or about March 31, 1999. The statement covered the period January 1, 1998 through December 31, 1998. On the cover page of the statement, in the section entitled "Schedule Summary," Respondent declared, under penalty of perjury, that he had no reportable interests. In fact, Respondent had the two rental properties and the sources of income, referenced above. In addition, Respondent received income and travel reimbursements from Sunpro, a software company that did business with the Modesto Fire Department.

In June 1998, while working for the Modesto Fire Department, Respondent also began working for Sunpro. Sunpro is a developer and the licensor of a variety of fire service software packages, which provide fire departments the means to collect, analyze, and participate in state/national information systems. In 1998, Respondent received gross income from Sunpro totaling \$13,298.25. He also received travel reimbursements from Sunpro totaling \$5,065.13.

The Modesto Fire Department made the decision to use Sunpro software products in the early 1990's, and made its first purchase of Sunpro software in 1995. Respondent functioned as the primary liaison between the Modesto Fire Department and Sunpro, from 1997 through 2000, and was responsible for all product purchases, license agreement renewals, and other business transactions with Sunpro.

By failing to disclose interests in real property and sources of income on the 1998 annual SEI that he filed on or about March 31, 1999, Respondent violated Section 87300.

When the propriety of his outside employment with Sunpro came under public scrutiny,

Respondent corrected his inaccurate disclosure, by filing an amendment to his 1998 annual SEI on or about June 9, 2000.

CONCLUSION

SEI non-disclosure violations are serious violations of the Act, and historically carry a high penalty, as disclosure omissions create an appearance of impropriety. When a non-disclosure violation is coupled with another violation, such as a conflict of interest, or is an on-going violation, in that the disclosure omission is duplicated in a subsequent SEI or amendment, the violation often carries a maximum penalty.

Respondent was a long-time public official, having served as a battalion chief for 15 years, and should have been aware of his conflict of interest disclosure obligations under the Act. Yet, for 15 years, Respondent declared on his SEI's that he had no reportable interests. By failing to disclose assets and income which may be materially affected by his official actions, Respondent thwarted one of the express purposes of the Act.

Respondent corrected his inaccurate disclosure, by filing amendments to his 1997 and 1998 annual SEI's.

This matter consists of two counts, which carry a maximum administrative penalty of Four Thousand Dollars (\$4,000). The facts of this case, including the factors discussed above, justify imposition of the agreed upon penalty of Four Thousand Dollars (\$4,000).